

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

ATLANTIC WORLD
AIRWAYS, INC.

FAA Order No. 95-28

Served: December 19, 1995

Docket No. CP95SO0063

ORDER OF DISMISSAL

Respondent Atlantic World Airways, Inc. (Atlantic) has appealed from Chief Administrative Law Judge John J. Mathias's initial decision dismissing Atlantic's request for hearing and assessing the \$3,000 civil penalty requested in the complaint.¹ This decision affirms the law judge on the ground that Atlantic has failed to show good cause for its failure to file a timely answer to the complaint.

On March 2, 1995, Complainant issued a complaint alleging that Atlantic violated Section 135.63(a)(4)(iv) and (vii) of the Federal Aviation Regulations, 14 C.F.R. §§ 135.63(a)(4)(iv) and (vii).² Specifically, Complainant alleged that when an

¹ A copy of the law judge's written initial decision is attached.

² Section 135.63(a)(4)(iv) and (vii) provide, in relevant part, as follows:

§ 135.63 Recordkeeping requirements.

(a) Each certificate holder shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator the following--

...

(4) An individual record of each pilot used in operations under this part, including the following information:

...

(iv) The pilot's current duties and the date of the pilot's assignment to those duties.

...

FAA inspector inspected Atlantic's facilities on March 16, 1994, Atlantic was unable to produce flight, rest time, and assigned duty records for three of its pilots for the last four months of 1993 and the first three months of 1994. The complaint included a statement reminding Atlantic of the requirement to file an answer within 30 days after service of the complaint. The answer was due on April 6, 1995.³

On March 13, 1995, the law judge issued an order in which he notified the parties that they must serve all future communications on the law judge, the hearing docket, and the opposing party. The following day, on March 14, 1995, the law judge issued an order in which he reminded Atlantic about the answer requirement. In this order, the law judge also advised Atlantic that a general denial was insufficient and that anything submitted in response to the Notice of Proposed Civil Penalty would not meet the requirement to file an answer to the complaint.

Atlantic did not file an answer by its deadline of April 6, 1995. Approximately 7 weeks later, on May 24, 1995, the law judge issued an order to show cause. In the order to show cause, the law judge stated that if Atlantic did not file an answer to the complaint or respond to the order to show cause by June 23, 1995, he would issue a default judgment. When the law judge still had not received any response to his order to show cause by July 10, 1995, he entered a default judgment against Atlantic.

(vii) The pilot's flight time in sufficient detail to determine compliance with the flight time limitations of this part.

³ Under the Rules of Practice, respondents must file a written answer to the complaint within 30 days after Complainant serves the complaint. 14 C.F.R. § 13.209(a). Atlantic had 5 additional days to file its answer because Complainant served the complaint by mail. 14 C.F.R. § 13.211(e). In this case, where the complaint was served on March 2, 1995, the answer became due on April 6, 1995.

About a week later,⁴ Atlantic's President, Mark Blanton, filed a notice of appeal from the law judge's decision. On the same date, Mr. Blanton also sent the law judge a request for reconsideration in which he stated that Atlantic did indeed answer the show cause order before the June 23, 1995, deadline imposed by the law judge. Mr. Blanton attached to the request for reconsideration a copy of his letter, which was dated June 20, 1995, responding to the show cause order. The June 20, 1995, letter answered the allegations of the complaint, but made no attempt to explain why Atlantic failed to file the answer by the April 6, 1995, deadline for filing an answer.

On July 25, 1995, the law judge denied Atlantic's request for reconsideration, stating that he lost jurisdiction of the case when he issued his initial decision and that the only possible relief for Atlantic lay in the notice of appeal that Atlantic had filed.⁵ The law judge noted that neither he nor the hearing docket had received a copy of Atlantic's June 20, 1995, letter.

The law judge's order dismissing Atlantic's request for hearing and assessing a civil penalty must be affirmed. The Rules of Practice do not grant law judges the authority to extend the deadline for filing an answer without a showing of good cause. Section 13.209(a) sets a 30-day deadline for filing the answer to the complaint, and Section 13.209(f) states that without good cause, a person's failure to file an answer *shall* be deemed an admission of the truth of each allegation

⁴ The postmark date on the envelope is July 18, 1995.

⁵ Atlantic's appeal brief was due on September 5, 1995, but Atlantic failed to file an appeal brief by the deadline. In an earlier order, Atlantic's notice of appeal was construed as an appeal brief and Complainant was directed to submit a reply brief. FAA Order No. 95-23 (October 13, 1995).

contained in the complaint. Thus, under the Rules of Practice, a showing of good cause is mandatory. Without it, failure to file an answer by the deadline may not be excused. Atlantic has failed to show good cause for its failure to file an answer by the deadline of April 6, 1995.⁶

Even if the law judge had the authority to extend the time for filing an answer until June 23, 1995, without a showing of good cause, Atlantic has failed to show that it filed its letter dated June 20, 1995, before June 23, 1995.

Under Section 13.210(b), a mailed document is considered filed on either the date shown on the certificate of service, the date on the postmark if there is no certificate of service, or the date shown by other evidence if there is no certificate of service or postmark.⁷ Here, Atlantic failed to attach a certificate of service to its June 20, 1995, letter. The law judge, the hearing docket, and Complainant have each indicated that they never received Atlantic's June 20, 1995, letter.⁸ As a result, there is no envelope bearing a postmark date that would provide evidence that the June 20, 1995, letter was mailed before the June 23, 1995, deadline imposed by the

⁶ The instant case is distinguishable from In the Matter of Columna, FAA Order No. 94-30 (September 30, 1994), in which the Administrator found good cause for a late-filed answer. In Columna, the law judge had issued a notice to the respondent *before* the answer was due that may have led the respondent to believe that the 30-day deadline for filing an answer was not a firm deadline. Here, the law judge issued nothing before the April 6, 1995, deadline for filing an answer that would have misled a reasonable person.

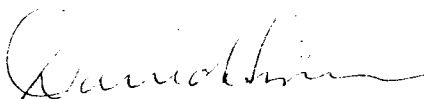
⁷ 14 C.F.R. § 13.210(b) provides as follows:

(b) *Date of filing.* A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other *evidence* if there is no certificate of service or postmark.

⁸ While they received *copies* of the letter, it was not until much later. Atlantic attached copies of the June 20, 1995, letter to its request for reconsideration filed with the law judge on July 18, 1995.

law judge. A party's unsworn statement does not constitute evidence. Thus, there is no evidence in the record showing that Atlantic filed the letter by June 23, 1995.

It was Atlantic's responsibility to ensure that its answer was properly and timely filed, or if it failed to do so, to show good cause for any lapse in this regard. This it has failed to do. As a result, Atlantic's appeal is dismissed. The law judge's decision assessing a \$3,000 civil penalty is affirmed.⁹



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of December, 1995.

⁹ Unless Atlantic files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1994).